रजिस्ट्री सं० डी० 221 REGISTERED No. D-221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 50] नई दिल्ली, शनिवार, अगस्त 31, 1968/भाद्र 9, 1890
No. 50] NEW DELHI, SATURDAY, AUGUST 31, 1968/ BHADRA 9, 1890

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 31st August, 1968:—

BILL No. XXXIII OF 1968

A Bill further to amend the Advocates Act, 1961

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Advocates (Second Amendment) Act, 1968. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 1.

2. In section 1 or the Advocates Act, 1961 (hereinafter referred to as the principal Act),— 25 of 1961.

(*a*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) It extends to the whole of India.";

(*b*) in sub-section (*3*), for the words "shall come into force", the words, brackets and figure "shall, in relation to the territories other than those referred to in sub-section (4), come into force" shall be substituted;

(*c*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) This Act shall, in relation to the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu, come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.".

Amendment of section 2.

3. In section 2 of the principal Act,—

(*a*) clause (*f*) shall be omitted;

(*b*) in sub-clause (*ii*) of clause (*g*), for the words "the High Court of Punjab", the words "the High Court of Delhi" shall be substituted.

Amendment of section 3.

4. In section 3 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*), after the word "Gujarat,", the words "Jammu and Kashmir," shall be inserted;

(*ii*) in clause (*ccc*), for the words "the Union territory of Dadra and Nagar Haveli,", the words "the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu," shall be substituted;

(*b*) in sub-section (*2*),—

(*i*) in clause (*a*), for the words "in the case of the State Bar Council of Delhi, the Additional Solicitor-General of India, *ex-officio*; ", the following words shall be substituted, namely:—

"in the case of the State Bar Council of Assam and Nagaland, the Advocate-General of each of the States

of Assam and Nagaland, *ex-officio;* in the case of the State Bar Council of Punjab and Haryana, the Advocate-General of each of the States of Punjab and Haryana, *ex-officio*; in the case of the State Bar Council of Delhi, an advocate nominated by the Attorney-General of India;";

(*ii*) in clause (*b*), for the words "the Bar Council of Assam", the words "the Bar Council of Assam and Nagaland, the Bar Council of Jammu and Kashmir" shall be substituted.

Amendment of section 4.

5. In section 4 of the principal Act, in clause (*i*) of sub-section (*3*), after the words "his election", the words "or till he ceases to be a member of the State Bar Council, whichever is earlier" shall be inserted.

Amendment of section 6.

6. In section 6 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) A State Bar Council may constitute a fund or funds in the prescribed manner—

(*a*) for giving financial assistance to indigent or disabled advocates;

(*b*) for giving legal aid to the poor.".

Amendment of section 7.

7. Section 7 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and—

(*a*) in sub-section (*1*) as so re-numbered, clause (*a*) shall be omitted;

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) The Bar Council of India may constitute a fund in the prescribed manner for giving legal aid to the poor.".

Insertion of new section 7A.

8. After section 7 of the principal Act, the following section shall be inserted, namely:—

Membership in international bodies.

"7A. The Bar Council of India may become a member of international legal bodies such as the International Bar Association or the International Legal Aid Association, contribute such sums as it thinks fit to such bodies by way of subscription or otherwise and authorise expenditure on the participation of its

representatives in any international legal conference or seminar.".

Amendment of section 8.

9. In section 8 of the principal Act,—

(*a*) in sub-section (*1*), the following proviso shall be inserted at the end, namely:—

"Provided that the term of office of members elected to a State Bar Council after the commencement of the Advocates (Amendment) Act, 1966, shall be five years from the date of publication of the result of their election."; 23 of 1966.

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) In the case of the State Bar Council of Delhi, the term of office of the advocate nominated by the Attorney-General of India under clause (*a*) of sub-section (*2*) of section 3, shall be five years from the date of his nomination:

Provided that such advocate may, by writing under his hand, addressed to the Attorney-General of India resign his office.".

Amendment of section 15.

10. In section 15 of the principal Act, in clause (*b*) of sub-section (*2*),—

(*a*) after the words "a fund", the words "or funds" shall be inserted;

(*b*) after the words "disabled advocates", the words "or for giving legal aid to the poor" shall be inserted.

Amendment of section 16.

11. In section 16 of the principal Act, in sub-section (*2*), for the words "experience and standing at the Bar", the words "standing at the Bar or special knowledge or experience in law" shall be substituted.

Amendment of section 17.

12. In section 17 of the principal Act, in sub-section (*3*), clause (*c*) shall be omitted.

Substitution of new section for section 20.

13. For section 20 of the principal Act, the following section shall be substituted, namely:—

Special provision for

"20. (*1*) Notwithstanding anything contained in this Chapter, every advocate who was entitled as of right to practise in the Supreme Court immediately before the appointed day and

whose name is not entered in any State roll may, within the prescribed time, express his intention in the prescribed form to the Bar Council of India for the entry of his name in the roll of a State Bar Council and on receipt thereof the Bar Council of India shall direct that the name of such advocate shall, without payment of any fee, be entered in the roll of that State Bar Council, and the State Bar Council concerned shall comply with such direction. enrolment of certain Supreme Court advocates.

(2) Any entry in the State roll made in compliance with the direction of the Bar Council of India under sub-section (1) shall be made in the order of seniority determined in accordance with the provisions of sub-section (3) of section 17.

(3) Where an advocate referred to in sub-section (1) omits or fails to express his intention within the prescribed time, his name shall be entered in the roll of the State Bar Council of Delhi.".

14. In section 21 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 21.

"(2) Subject as aforesaid, if any dispute arises with respect to the seniority of any person, it shall be referred to the State Bar Council concerned and the decision of the State Bar Council in respect of such dispute shall be final.".

15. For section 22 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 22.

"22. There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act.". Certificate of enrolment.

16. In section 23 of the principal Act,— Amendment of section 23.

(a) sub-section (3) shall be omitted;

(b) in sub-section (4), for the words, brackets and figures "sub-sections (1), (2) and (3)", the words, brackets and figures "sub-sections (1) and (2)" shall be substituted.

17. In section 24 of the principal Act, in sub-section (1), in the proviso to clause (d),— Amendment of section 24.

(a) in clause (i), for the words, figures and letters "before the 31st day of March, 1964 or such other later date as may be

prescribed", the words, figures and letters "before the 1st day of January, 1969" shall be substituted;

(*b*) after clause (*i*), the following clause shall be inserted, namely:—

"(*ia*) any person who, after the 1st day of January, 1969, obtains a degree in law after undergoing a course in law the duration whereof is not less than three academic years, or obtains a Master's degree or any higher degree in law, from any University in India.".

Substitution of new section for section 26A.

18. For section 26A of the principal Act, the following section shall be substituted, namely:—

Power to remove names from roll.

"26A. A State Bar Council may remove from the State roll the name of any advocate who is dead or from whom a request has been received to that effect.".

Amendment of section 30

19. In section 30 of the principal Act, for the words "common roll", the words "State roll" shall be substituted.

Amendment of section 34.

20. In section 34 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.".

Amendment of section 35.

21. In section 35 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.";

(*b*) in sub-section (*2*), the words "if it does not summarily reject the complaint," shall be omitted;

(*c*) in the *Explanation,* for the words "the Additional Solicitor General of India", the words "the advocate nominated by the Attorney-General of India in this behalf" shall be substituted.

Amendment of section 36.

22. In section 36 of the principal Act,—

(*a*) in sub-section (*1*), the words "on the common roll" shall be omitted;

(*b*) in sub-section (*2*), for the words "of its own motion", the words "either of its own motion or on a report by any State Bar Council or on application made to it by any person interested" shall be substituted;

(*c*) in sub-section (*4*), for the words "before the Bar Council of India", the words "before the disciplinary committee of the Bar Council of India" shall be substituted.

Insertion of new section 36A.

23. After section 36 of the principal Act, the following section shall be inserted, namely:—

Changes in the constitution of disciplinary committees.

"36A. Whenever in respect of any proceeding under section 35 or section 36, a disciplinary committee of the State Bar Council or a disciplinary committee of the Bar Council of India ceases to exercise jurisdiction and is succeeded by another committee which has and exercises jurisdiction, the disciplinary committee of the State Bar Council or the disciplinary committee of the Bar Council of India, as the case may be, so succeeding may continue the proceedings from the stage at which the proceedings were so left by its predecessor committee:

Provided that the advocate concerned may demand that before the proceedings are so continued, the previous proceedings or any part thereof be re-opened or that before any order is passed against him, he be re-heard.".

Amendment of section 37.

24. In section 37 of the principal Act, in sub-section (*2*),—

(*a*) after the words "such order", the brackets and words "(including an order varying the punishment awarded by the disciplinary committee of the State Bar Council)" shall be inserted;

(*b*) the following proviso shall be inserted at the end, namely:—

"Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary

committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.".

Amendment of section 38.

25. In section 38 of the principal Act,—

(*a*) after the words "such order", the brackets and words "(including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India)" shall be inserted;

(*b*) the following proviso shall be inserted at the end, namely:—

"Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.".

Omission of section 39.

26. Section 39 of the principal Act shall be omitted.

Amendment of section 40.

27. Section 40 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Where an application is made for stay of the order before the expiration of the time allowed for appealing therefrom under section 37 or section 38, the disciplinary committee of the State Bar Council or the disciplinary committee of the Bar Council of India, as the case may be, may for sufficient cause direct the stay of such order on such terms and conditions as it may deem fit.".

Amendment of section 41.

28. In section 41 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) clause (*b*) shall be omitted; and

(*ii*) the words "or the common roll, as the case may be" shall be omitted;

(*b*) sub-section (*2*) shall be omitted.

Amendment of section 42.

29. In section 42 of the principal Act, after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) Notwithstanding the absence of the Chairman or any member of a disciplinary committee on a date fixed for the hear-

ing of a case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings and no order made by the disciplinary committee in any such proceedings, shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date.".

Insertion of new section 42A.

30. After section 42 of the principal Act, the following section shall be inserted, namely:—

Powers of Bar Council of India and other committees.

"42A. The provisions of sub-sections (*1*), (*2*), (*3*) and (*4*) of section 42 shall, so far as may be, apply in relation to the Bar Council of India, the enrolment committee, the election committee or any other committee of a Bar Council as they apply in relation to the disciplinary committee of a Bar Council.".

Insertion of new section 46A.

31. After section 46 of the principal Act, the following section shall be inserted, namely:—

Financial assistance to State Bar Council.

"46A. The Bar Council of India may, if it is satisfied that any State Bar Council is in need of funds for the purpose of performing its functions under this Act, give such financial assistance as it deems fit to that Bar Council by way of grant or otherwise.".

Amendment of section 48.

32. In section 48 of the principal Act, after the words "a member of a Bar Council", the words "or any committee thereof" shall be inserted.

Insertion of new section 48AA.

33. After section 48A of the principal Act, the following section shall be inserted, namely:—

Review.

"48AA. The Bar Council of India or any of its committees other than its disciplinary committee, may of its own motion or otherwise review any order passed by it under this Act.".

Substitution of new section for section 49A.

34. For section 49A of the principal Act, the following section shall be substituted, namely:—

Power of Central Government to

"49A. (*1*) Where the Central Government considers it expedient so to do, it may, by order in writing, direct a Bar Council

direct rules to be made or to make or amend rules.

to make any rules or to amend or revoke any rules already made within such period as it may specify in this behalf.

(2) If such Bar Council fails or neglects to comply with such order within the specified period, the Central Government may make the rules or amend or revoke the rules made by that Bar Council, as the case may be, either in the form specified in the order or with such modifications thereof as the Central Government thinks fit.".

Insertion of new sections 58AC, 58AD and 58AE.

35. After section 58AB of the principal Act, the following sections shall be inserted, namely:—

Special provisions with respect to certain persons migrating to India.

"58AC. Notwithstanding the repeal by this Act of the provisions of the Legal Practitioners Act, 1879, or of any other law relating to the admission and enrolment of legal practitioners (hereinafter in this section referred to as such Act or law), every person who migrates to the territory of India from any area which, before the 15th day of August, 1947, was comprised within India as defined in the Government of India Act, 1935, and who has, before such migration, been a pleader, mukhtar or revenue agent in any such area under any law in force therein, may be admitted and enrolled under the relevant provisions of such Act or law as a pleader, mukhtar or, as the case may be, revenue agent, if he— 18 of 1879.

(*a*) makes an application for the purpose to the appropriate authority under such Act or law; and

(*b*) is a citizen of India and fulfils other conditions, if any, specified in this behalf by the appropriate authority aforesaid;

and notwithstanding the repeal by this Act of the relevant provisions of such Act or law, every pleader, mukhtar or revenue agent so enrolled shall have the same rights as respects practice in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority to which he would be subject under the relevant provisions of such Act or law as if they had not been repealed and accordingly, those provisions shall have effect in relation to such persons.

Special provisions in relation to the Union territory of Goa, Daman and Diu.

58AD. (*1*) Notwithstanding anything contained in this Act, all persons who, immediately before the date on which the provisions of Chapter III are brought into force in the Union territory of Goa, Daman and Diu were entitled to practise the profession of law (whether by way of pleading or acting or both) under any law in force in the said Union territory or who would have been so entitled had they not been in public service on the said date, shall, for the purpose of clause (*a*) of sub-section (*1*) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926, and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of Maharashtra, be admitted as an advocate on the State roll maintained in respect of the said Union territory:

38 of 1926.

Provided that the provisions of this sub-section shall not apply to any person who, on the date of the application aforesaid, was not a citizen of India.

(*2*) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the Union territory of Goa, Daman and Diu and was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force in the said Union territory, who does not elect to be or is not qualified to be, enrolled as an advocate under sub-section (*1*), shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or, as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

(*3*) On the date on which this Act or any part thereof comes into force in the said Union territory the law in force in that Union territory which corresponds to this Act or such part and which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.

Special provisions in relation to Jammu and Kashmir.

58AE. (*1*) Notwithstanding anything contained in this Act, all advocates who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, were entitled to practise in the High Court of that State or who would have been so entitled had they not been in public service on the said date shall, for the purpose of clause (*a*) of sub-section (*1*) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926, and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of India, be admitted as an advocate on the State roll maintained in respect of the said State. 38 of 1926.

(*2*) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, was entitled otherwise than as an advocate to practise the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law in force in the said State, or who would have been so entitled had he not been in public service on the said date, may be admitted as an advocate on the State roll maintained in respect of the said State, if he—

(*i*) makes an application for such enrolment in accordance with the provisions of this Act; and

(*ii*) fulfils the conditions specified in clauses (*a*), (*b*), (*e*) and (*f*) of sub-section (*1*) of section 24.

(*3*) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the State of Jammu and Kashmir, was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force therein, who does not elect to be or is not qualified to be enrolled as an advocate under sub-section (*1*) or sub-section (*2*) shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or as the case may be, to which he was subject, immediately before the said date and accordingly the

relevant provisions of the law aforesaid shall have effect in relation to such person as if they had not been repealed.

(4) On the date on which this Act or any part thereof comes into force in the State of Jammu and Kashmir, the law in force in that State which corresponds to this Act or such part thereof which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.".

STATEMENT OF OBJECTS AND REASONS

The Advocates Act Review Committee consisting of lawyer members of Parliament and the Attorney-General of India was appointed in February, 1966 to review the working of the Advocates Act, 1961 in all its aspects and suggest amendments thereto. In view of the appointment of the Committee, the Advocates (Amendment) Bill, 1965 pending in the Lok Sabha was withdrawn to be replaced by a more comprehensive Bill. On the basis of the recommendations of the Committee and the experience gained in the practical working of the Advocates Act, 1961, it is proposed to amend it. The principal amendments proposed in the Bill are as under:—

(*i*) The Advocates Act, 1961 enacted in May, 1961 provides for a unified all-India Bar with one class of legal practitioners, namely, advocates. who would be entitled to practise in all the courts in India including the Supreme Court. At present this Act extends to the whole of India except the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu. The object underlying the Act cannot be fully achieved unless it extends to these areas also. It is, therefore, proposed to extend this Act to the whole of India including the aforesaid areas. The legal practitioners practising in these areas have been given the right to get themselves enrolled as Advocates under the Act. But if some do not get so enrolled, their existing rights will be preserved.

(*ii*) Legal practitioners have been migrating from Pakistan to India and in order to cover their cases it is proposed to provide that such legal practitioners shall be allowed to continue to practise as pleader, revenue agent or mukhtar, even if they are not entitled to be enrolled as advocates under the Advocates Act, 1961.

(*iii*) Under the Act, before a person is qualified to be admitted as an Advocate, he is to undergo a course of training in law and pass an examination prescribed by the State Bar Council. As a result of decisions taken by the Bar Council of India, in future a degree in law can be obtained only after a course of three years study, which has to be preceded by graduation. Consequently, the age of entry into the legal profession is raised and it is felt that after a three-year course in law in a univer-

sity, it is not necessary to insist on a further examination or practical training. It is, therefore, proposed to delete this provision.

(*iv*) It has been represented by the Bar Council of India that the preparation of the Common Roll of Advocates as envisaged under section 20 of the Act would be very expensive. The object would be equally served by providing for copies of the State rolls being sent to the Bar Council of India. It is, therefore, proposed to delete the provisions relating to the preparation of a common roll and to substitute references to the State roll.

(*v*) Section 49A of the Act empowers the Central Government to frame rules for the purposes of the Act. Any rules so made would over-ride rules made by the Bar Council of India or by a State Bar Council. In order to preserve the autonomy of the Bar Councils and to avoid requests being made to the Central Government to interfere in their day to day working, it has been decided to delete the section. In its place it is proposed to empower the Central Government to issue directions to the Bar Councils on the analogy of the provisions contained in section 30A of the Chartered Accountants Act, 1949.

2. The Bill seeks to achieve the above objects. Opportunity has been taken to make certain other amendments of a minor character in the Act.

3. The notes on clauses appended to the Bill explain the other provisions of the Bill.

NEW DELHI;
The 13th August, 1968.

P. GOVINDA MENON.

Notes on clauses

Clause 2.—This clause seeks to extend the Advocates Act to the State of Jammu and Kashmir, and to the Union territory of Goa Daman and Diu. The Central Government is empowered by notification to fix the date on which the Act will come into force in these areas and different dates may be chosen in respect of different provisions of this Act.

Clauses 3, 7, 13, 14, 15, 18, 19, 22 *and* 28.—It has been noticed that the preparation and maintenance of the common roll of advocates by the Bar Council of India, as contemplated by sub-section (1) of section 20 of the Advocates Act, would be extremely expensive and cumbersome. The object would be equally served by providing for copies of the State roll being sent to the Bar Council of India. It is accordingly proposed to make necessary changes in the Act.

The Union territory of Delhi has a separate High Court and is no longer under the High Court of Punjab. Hence this amendment is proposed by sub-clause (*b*).

Clause 4.—Section 3 deals with the constitution of the State Bar Councils. It is proposed to have a separate Bar Council consisting of 15 members for the State of Jammu and Kashmir while the Union territories of Goa, Daman and Diu and Dadra and Nagar Haveli will have a common Bar Council with the State of Maharashtra.

The post of Additional Solicitor-General of India having been abolished, it is necessary to provide for the discharge of the functions performed by him under the Act. It is proposed that the place of the Additional Solicitor-General of India should be taken by an advocate nominated by the Attorney-General of India.

The States of Assam and Nagaland and the States of Punjab and Haryana have common High Courts and common Bar Councils. It is proposed to make a specific provision that the Advocate-General of each of the States should be an *ex-officio* member of the concerned Bar Council.

Clause 5 provides that a member of the Bar Council of India shall cease to hold office as such if he ceases to be a member of the State Bar Council concerned.

Clauses 6 *and* 10.—The State Bar Councils are being empowered to organise legal aid and to formulate rules for that purpose.

Clause 7(b).—It is also proposed to enable the Bar Council of India to organise legal aid to the poor and formulate rules for that purpose.

Clause 8.—It is necessary for the Bar Council of India to become a member of international legal bodies and to contribute fund to such bodies by way of subscription or otherwise. The clause confers the necessary authority.

Clause 9.—The election to the Bar Council involves considerable expenditure. In order to curtail the expenditure the term of office of members of State Bar Councils is proposed to be extended from the present four years to five years for members elected after the Advocates (Amendment) Act, 1966 came into force. The term of office of the member nominated by the Attorney-General of India to the Bar Council of Delhi is fixed also at five years.

Clause 11.—This clause seeks to provide that special knowledge or experience in law may also be taken into account in designating an advocate as a senior advocate.

Clause 12.—Section 17(3) provides that the seniority of vakils, pleaders and attorneys who were enrolled as advocates should be determined in accordance with the date of their entry in the register of vakils, pleaders or attorneys as the case may be. It is proposed that the seniority of vakils, pleaders and attorneys who were not entitled to practise in the High Courts under the Indian Bar Councils Act, 1926 and who were enrolled as advocates immediately before the appointed date, namely, the 1st December, 1961 or thereafter, shall be determined according to the date of enrolment as advocates, and for that purpose to delete clause (c) of sub-section (3) of section 17 of the Act.

Clause 13.—At present there are some advocates of the Supreme Court whose names do not appear in any State roll. Provision is proposed to be made that they should enroll themselves on any State roll of their choice within the prescribed period. In the event of their failure to do so, their names would be transferred to the rolls of the Bar Council of Delhi.

Clauses 14 *and* 15.—In view of the proposed abolition of the common roll of advocates, consequential changes are sought to be effected by these clauses.

Clause 16 seeks to delete sub-section (3) of section 23 of the Act consequent on the abolition of the office of the Additional Solicitor-General of India.

Clause 17.—It is proposed to amend section 24 so as to abolish the requirement of practical training and examination before enrolment as an advocate, in the case of law graduates who have obtained the said degree after a three-year course of study and also those who obtained their law degree before the 1st January, 1969.

Clauses 18 *and* 19.—These are consequential amendments in view of the proposed abolition of the common roll of advocates.

Clause 20.—Section 27 of the Legal Practitioners Act, 1879 empowers the High Court *inter alia* to fix fees for adversary's advocate, pleader, vakil, mukhtar or attorney in all proceedings before the High Court and the courts subordinate to it. But the section would stand repealed as soon as Chapter IV of the Advocates Act would be brought into force. There is no comparable provision in the latter Act. The clause seeks to achieve the purpose.

Clause 21.—A State Bar Council is being empowered to transfer cases pending before one of its disciplinary committees to another either of its own motion or on application and the provision relating to summary rejection of complaints is being omitted and certain consequential changes made.

Clause 22.—It is sought to empower the disciplinary committee of the Bar Council of India to withdraw for inquiry before itself any proceedings for disciplinary action against an advocate *suo motu* or on a report by a State Bar Council or on an application made to it by an interested person.

Clause 23.—This clause seeks to ensure continuity in the proceedings of a disciplinary committee of a Bar Council in the event of its reconstitution.

Clauses 24 *and* 25.—The appellate authority is being authorised to enhance the punishment awarded to an advocate after giving him an opportunity of being heard.

Clause 26.—In view of section 29(2) of the Limitation Act, 1963, section 39 of the Act has become otiose and is being deleted.

Clause 27.—It is proposed to empower the disciplinary committee of a State Bar Council to grant on an application made to it stay of operation of its orders to enable the aggrieved party to obtain stay

orders from the disciplinary committee of the Bar Council of India, and to empower the disciplinary committee of the Bar Council of India to grant stay.

Clause 28.—This amendment is consequential on the proposed abolition of the common roll.

Clause 29.—It is proposed that the disciplinary committee be authorised to proceed with the hearing in the absence of the chairman or a member thereof.

Clause 30.—Like the disciplinary committee, the enrolment committee, the election committee and other committees of a Bar Council and the Bar Council of India are being empowered to summon witnesses, and to enjoy other powers exercisable by the disciplinary committee under section 42 of the Act.

Clause 31.—State Bar Councils have felt at times the paucity of funds to carry on their functions under the Act. The clause seeks to authorise the Bar Council of India to give financial assistance to State Bar Councils by way of grant or otherwise.

Clause 32.—Under section 48 of the Act, indemnity against legal proceedings has been provided for Bar Councils, committees thereof and for members of the Bar Councils. It is proposed to extend the same indemnity against legal proceedings to members of the committees also, for their *bona fide* acts.

Clause 33.—It is proposed to empower the Bar Council of India and its committees (except the disciplinary committee) to review their own orders.

Clause 34.—Under section 49A of the Act the Central Government has the power to frame rules for the purposes of the Act. Any rules so made would over-ride rules made by the Bar Council of India or by a State Bar Council. In order to preserve the autonomy of the Bar Council and to avoid requests being made for interference in their day to day matters, it is proposed to delete the provision. However it is proposed to empower the Central Government to issue directions to the Bar Council.

Clause 35.—This clause seeks to allow displaced persons from Pakistan to practise as pleaders, revenue agents or mukhtars even if they are not entitled to be enrolled as advocates under this Act.

With the extension of the Advocates Act to the State of Jammu and Kashmir and the Union territory of Goa, Daman and Diu, the

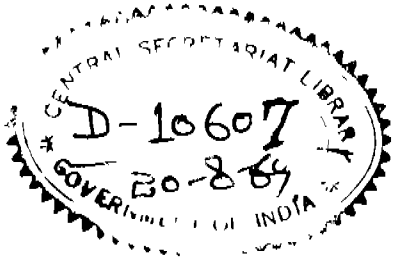
legal practitioners there have to be given the right to get themselves enrolled as advocates subject to their satisfying certain conditions. The right of those legal practitioners, who do not elect to be enrolled as advocates have also to be preserved. New sections 58AD and 58AE are proposed to be inserted for the purpose.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill seeks to amend section 15 of the Advocates Act, which deals with the rule making power of the Bar Councils. It is proposed to empower the State Bar Councils to frame rules for the purposes of giving legal aid to the poor. Under clause 20 it is proposed to empower the High Court to make rules for fixing and regulating by taxation or otherwise the fees payable as costs in civil proceedings in the High Court or in any court subordinate thereto. Clause 34 seeks to substitute section 49A of the Act, which empowers the Central Government to make rules for carrying out the purposes of the Act including rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make rules. It is proposed to limit the power of the Central Government to direct a Bar Council to make any rules, or to amend or revoke any rules already made. In case the Bar Council fails to comply or neglects to comply with the direction, the Central Government may make such rules or amend or revoke an existing rule as it thinks fit.

2. The delegation of legislative power is of a normal character.

B. N. BANERJEE,
Secretary.



PRINTED IN INDIA BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1964